

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2097 OF 2006**

Sadashiv Dashrath Bhosale

...Petitioner

vs.

Ratnaprabha Padmakar Borse & Anr.

...Respondents

Mr.J.Shekhar i/b M/s.J.Shekhar & Co.for the Petitioner
Mr.A.S.Shitole,A.P.P. for State

**CORAM: A.S.OKA,J.
DATE : OCTOBER 3,2006.**

P.C.:

1. Heard the learned Advocate appearing for the Petitioner. The Petitioner is an accused in a complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The challenge in this Petition under Article 227 of Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 is to an order dated 14th August 2006 passed by the learned Judicial Magistrate First class. The said order has been passed in exercise of power under section 311 of the said Code.

2. The first Respondent produced an office copy of notice under section 138(b) of the said Act along with postal envelope containing the notice which was returned to her Advocate with remark "Not claimed". In the Affidavit of examination-in-chief, the first Respondent identified the signature of her Advocate on office copy of the said notice. By impugned order dated 14th August 2006, the learned

Magistrate has noted that the envelope produced by the first Respondent allegedly contained the notice of demand will have to be opened and the notice containing therein will have to be placed on record. By the impugned order, the learned Judicial Magistrate First Class has recalled the first Respondent for examination on a limited point of notice contained in the postal envelope. The learned Magistrate has observed that the Petitioner will have a right to cross examine the first Respondent.

3. The learned Advocate for the Petitioner submitted that the order was passed at the fag end of the trial. He submitted that the order will have the effect of allowing filling up the lacuna in case of the first Respondent. The power under section 311 of the said Code could not have been used to allow the Respondent to fill up the lacuna in the case.

4. I have considered the submissions. The postal envelope and office copy of the demand notice is already placed on record by the first Respondent and as stated earlier, the first Respondent identified the signature of her Advocate on the office copy of notice. The effect of impugned order will be that the postal envelope allegedly containing the original notice of demand will be opened and the notice contained therein will be placed on record. On the limited aspect of the said notice, the learned Trial Judge has directed the recall of the complainant (first Respondent). An opportunity

has been given to the Petitioner to cross examine the first Respondent.

5. The jurisdiction under Article 227 of Constitution of India is an extraordinary and discretionary jurisdiction.

The power under section 482 of the said Code has to be

exercised sparingly and only in extraordinary cases.

Considering the nature of the impugned order, I find that the

Petition does not deserve to be entertained. Petition is

accordingly rejected.

JUDGE